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15.1 Motions for Rehearing

The court rule governing rehearings, MCR 5.992, allows a “party” to seek a rehearing or new trial by filing a written motion* stating the basis for the relief sought. MCR 5.992(A). “Party” means the petitioner, child, respondent-parent, or other parent or guardian. MCR 5.903(A)(13)(b).

The statute governing rehearings, MCL 712A.21; MSA 27.3178(598.21), allows a petition to be filed by “an interested person,” which includes a member of a local Foster Care Review Board. MCL 712A.21(1) and (3); MSA 27.3178(598.21)(1) and (3).*

In any case, a motion will not be *considered* unless it presents a matter not previously presented to the court, or presented but not previously considered by the court, which, if true, would cause the court to reconsider the case. MCR 5.992(A). Even if the court considers the motion, it may not grant the requested relief.*

The petition for rehearing must set forth in detail the place, manner, and other information requested by the court pertaining to the proposed future custody of the child. MCL 712A.21(1); MSA 27.3178(598.21)(1).

*See Form
JC 15.

*See Benchnote
8 for a
discussion of
Foster Care
Review Boards.

*See Section
15.2,
immediately
below.

15.2 Standard for Granting Relief

MCR 5.992(A) does not state the standard for granting relief following a court’s decision to consider a party’s motion for rehearing. *In re Alton*, 203 Mich App 405, 409 (1994). However, MCR 2.613(A), the “harmless error rule” for civil proceedings, applies to child protective proceedings. MCR 5.902(A). The “harmless error rule” states that an error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying,

or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice. MCR 2.613(A).

A refusal to grant a request for rehearing will be reversed by the Court of Appeals only when the refusal represents an abuse of discretion. *In re Johanson*, 156 Mich App 608, 611 (1986).

*See Section 5.1 for a summary of notice requirements.

15.3 Notice Requirements

MCR 5.992(B) states that all parties must be given notice of the motion in accordance with MCR 5.920.*

15.4 Time Requirements for Filing Motions for Rehearing

The written motion stating the basis for the relief sought must be filed within 21 days after decision of disposition or supplemental disposition. The court may entertain an untimely motion for good cause shown. MCR 5.992(A). MCL 712A.21(1); MSA 27.3178(598.21)(1), allows for the petition for rehearing to be filed “[a]t any time while the [child] is under the jurisdiction of the court. . . .”

Note: Because time requirements are procedural, it is recommended that the time requirements in the court rule be followed. See MCR 1.104 (rules of practice in statute superseded by court rule).

If parental rights have been terminated, the petition for rehearing must be filed not later than 20 days after the entry of the order terminating parental rights. MCL 712A.21(1); MSA 27.3178(598.21)(1).

15.5 Time Requirements for Filing Response

Any response by parties to a motion for rehearing must be in writing and filed with the court and served on opposing parties within seven days of the motion. MCR 5.992(C).

15.6 Remedies

MCR 5.992(D) states that the judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case. The court may enter an order for supplemental disposition while the child remains under the court’s jurisdiction. MCL 712A.21(1); MSA 27.3178(598.21)(1).

15.7 No Hearing Required

MCR 5.992(E) states that the court need not hold a hearing for a ruling on a motion for rehearing. Any hearing conducted shall be in accordance with the rules for dispositional hearings and, at the discretion of the court, may be assigned to the person who conducted the original hearing.*

*See Section 13.16 for a discussion of the applicable evidentiary rules.

15.8 Findings by Court

The court shall state the reasons for its decision on the record or in writing. MCR 5.992(E).

15.9 Stay of Proceedings

MCR 5.992(F) states that the court may stay any order pending a ruling on a motion for rehearing.

